IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JASON MATTHEW DILLON, Appellant.	No. 37819-1-II UNPUBLISHED OPINION

Van Deren, C.J.—Jason Matthew Dillon appeals his conviction for unlawful possession of a stolen vehicle. He argues the evidence was insufficient to prove that he had actual or constructive possession of a stolen vehicle where police recovered no direct evidence that demonstrated that Dillon possessed the vehicle. We affirm.

FACTS

On November 26, 2007, Amos May reported his vehicle, a 1985 Toyota Corolla with the license plate number 719 UJP, stolen.

At approximately 1:56 am on November 27, while on routine patrol in the area of South 37th and M Street, Tacoma Police Officer Christopher Martin observed an older vehicle traveling westbound on South 37th Street. He began to follow the vehicle, "anticipating running a regular registration or stolen check on the license plate" number. Report of Proceedings (RP) at 70.

Martin did not activate the emergency lights or siren while he followed the vehicle. Martin was approximately one half block to one block behind the vehicle when it accelerated to approximately 40-50 miles per hour toward South 38th Street.[1] Martin "did not see the vehicle brake or slow or make any attempt to slow for the intersection at 38th Street."[2] RP at 72.

Martin testified that, "[W]hen he initially got behind the vehicle from a distance, [he] initially thought [it had] possibly two occupants" and reported to dispatch accordingly.[3] RP at 104. He continued to follow the vehicle and attempted to maintain visual contact, although he was unable to see it at all times.

Martin then saw what appeared to be the same vehicle stopped in the eastbound lane of South 45th Street, a two-way street in a residential area. "The passenger door was open. [Martin] then observed [a man] running south from the vehicle, passenger side." RP at 75. The suspect was a white male, wearing a blue jacket and blue jeans. Martin approached the vehicle and noted that the license plate was 719 UJP, the same as the stolen vehicle's, and notified dispatch.

Martin exited his vehicle and began searching for the person he had seen running from the scene. As he approached the backyard of 1424 South 45th Street, he saw a white male in a blue coat and blue jeans near the rear fence. Martin testified that he believed it was the person he saw fleeing from the vehicle because "the clothing matched." RP at 78. Martin gave several loud

---

[1] This is a residential area; the speed limit is 25 miles per hour.

[2] Martin did not observe the brake lights come on before the vehicle ran the stop sign.

[3] Martin could not determine if he saw two people or the headrests. He stated in an interview with defense counsel and an investigator that he thought there were two, maybe three, people in the vehicle.

commands for the person to stop. The person, later identified as Dillon, immediately turned toward Martin and placed his hands in the air. Martin placed Dillon in handcuffs and detained him in his patrol car. A Department of Licensing records check revealed "[t]hat . . . Dillon's driving status was suspended or revoked in the second degree." RP at 84.

Martin returned to the abandoned vehicle and conducted a vehicle check. The vehicle was still running and the passenger door was open. No other doors were open and the officer did not see other people in the area. Martin observed that both the driver and passenger seats had headrests. He found that a shaved, copper-colored key "jammed in th[e] ignition" had started the vehicle.[4] RP at 93. Martin also saw a cardboard box containing various videotapes and assorted junk items on the passenger seat and some shoes and clothing on the floor. Martin determined that nothing in the vehicle was of evidentiary value. Nothing found in the car was associated with Dillon.

Dillon was charged with unlawful possession of a stolen vehicle (count I), unlawful possession of a controlled substance (count II), reckless driving (count III), and second degree driving while in suspended or revoked status (count IV).[5] The jury convicted Dillon of possession of a stolen vehicle and unlawful possession of a controlled substance but acquitted him of reckless driving. Dillon appeals the conviction for unlawful possession of a stolen vehicle.

---

[4] Martin testified that it is common for suspects in stolen vehicle cases to have key rings containing "keys from different types of vehicles, Hondas, Toyotas, GM products, to use to attempt to steal various types of vehicles." RP at 81.

[5] The charge of second degree driving while in suspended or revoked status (count IV) was dismissed at the close of evidence and did not go to the jury.

ANALYSIS

I. Standard of Review

When reviewing a challenge to sufficiency of the evidence, we view the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the essential elements beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980). "[T]he reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt but only that substantial evidence supports the State's case." *State v. Valencia*, 148 Wn. App. 302, 313-314, 198 P.3d 1065, 1070-1071, *review granted sub nom. State v. Turner*, No. 82731-1 (Wash. July 7, 2009).

II. Sufficiency of the Evidence

Dillon argues that the evidence was insufficient for the jury to find him guilty of unlawful possession of a stolen vehicle. He contends that the sole evidence of his possession of the vehicle was Martin's testimony that he believed Dillon was the suspect seen running from the area where the vehicle was stopped. Even if the court relies on Martin's testimony, Dillon argues that the most that can be inferred from this evidence is that Dillon was a passenger in the vehicle. He argues that being a passenger is insufficient to show possession.

The State argues that Dillon was in constructive possession of the vehicle because there were no other people and no traffic in the area at the time Martin observed Dillon running from the abandoned vehicle and the vehicle was only out of Martin's sight for 15 seconds. The State contends that these facts "tend[] to show that [Dillon] was the sole occupant, and therefore, the driver of the stolen vehicle." Br. of Resp't at 8. We agree.

A. Possession of Stolen Vehicle

"A person is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle." RCW 9A.56.068(1) (alteration in original). To convict Dillon of unlawful possession of a stolen vehicle, the State had to prove beyond a reasonable doubt that Dillon knowingly possessed a stolen vehicle and that he acted with knowledge that the vehicle was stolen. 11A Washington Practice: Washington Pattern Jury Instructions: Criminal 77.21, at 177 (3d ed. 2008) (WPIC). In other words, the State must have proved beyond a reasonable doubt that Dillon not only possessed the stolen vehicle but that he possessed it knowingly or with knowledge that it was stolen.

B. Actual or Constructive Possession

Possession can be actual or constructive. "'Actual possession means that the goods are in the personal custody of the person charged with possession.'" *State v. Plank,* 46 Wn. App. 728, 731, 731 P.2d 1170 (1987) (quoting *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969)). Dillon was not in actual possession of the stolen vehicle when he was arrested. Therefore, we must determine whether there was sufficient evidence to establish that Dillon had constructive possession of the vehicle.

"Constructive possession cases are fact-sensitive." *State v. George,* 146 Wn. App. 906,

920, 193 P.3d 693 (2008). "Constructive possession is established by examining the totality of the situation and determining if there is substantial evidence" tending to establish circumstances "from which a jury can reasonably infer the defendant had dominion and control over the item." *State v. Jeffrey,* 77 Wn. App. 222, 227, 889 P.2d 956 (1995). Dominion and control need not be exclusive to establish constructive possession but close proximity alone is insufficient; other facts must enable the trier of fact to infer dominion and control. *See e.g., George*, 146 Wn. App. 920; *State v. Turner*, 103 Wn. App. 515, 521-22, 13 P.3d 234 (2000); *State v. Mathews*, 4 Wn. App. 653, 656-57, 484 P.2d 942 (1971).

Dillon relies on *State v. McCaughey*, 14 Wn. App. 326, 541 P.2d 998 (1975) and *State v. Cote*, 123 Wn. App. 546, 96 P.3d 410 (2004) to support his argument that the evidence was not sufficient to show his constructive possession of the vehicle. In *McCaughey*, the State attempted to establish that McCaughey possessed stolen merchandise police found in a vehicle near which McCaughey slept. The State argued that McCaughey's presence and the statements of a second person associated with the vehicle established constructive possession. *McCaughey*, 14 Wn. App. at 329. McCaughey argued that this evidence was insufficient to prove that he possessed the stolen goods. *McCaughey*, 14 Wn. App. 327. We agreed, holding that evidence of McCaughey's proximity to the vehicle and inconsistent statements about the stolen merchandise were insufficient to prove that McCaughey possessed the stolen merchandise in the vehicle. *McCaughey*, 14 Wn. App. 329.

In *Cote*, Division Three of this court held that the fact that Cote was a passenger in a truck in which drugs were found was insufficient to establish his constructive possession of the drugs. Cote was not in or near the truck at the time of arrest. *Cote*, 123 Wn. App. 546.

Here, Dillon was the only person within the vicinity of the stolen vehicle. Police found a box on the passenger seat, indicating that there was only one person in the vehicle. Dillon was seen fleeing from the vehicle while it was still running. These facts support a logical and reasonable inference that, unlike in *McCaughey* and *Cote*, there was only one occupant of the vehicle. The totality of the evidence, viewed in the light most favorable to the State, indicates that a reasonable juror could have concluded that Dillon was the individual Martin saw fleeing from the vehicle and that he had dominion and control over the vehicle, as the sole occupant and driver.[6]

C. Knowledge

In proving unlawful dominion and control over stolen property, the State must prove beyond a reasonable doubt that the defendant knew that the property was stolen. *Plank,* 46 Wn. App. at 731. Here, the State had to prove beyond a reasonable doubt that Dillon possessed a stolen motor vehicle, knowing that it was stolen. *See* 11A WPIC 77.20, at 176. Knowledge may be inferred if "a reasonable person would have knowledge under similar circumstances." *State v. Womble,* 93 Wn. App. 599, 604, 696 P.2d 1097 (1999).

Mere possession of recently stolen property is insufficient to establish that the possessor knew the property was stolen. *State v. Couet,* 71 Wn.2d 773, 775, 430 P.2d 974 (1967). But possession of recently stolen property, coupled with "slight corroborative evidence," is sufficient

[6] Even assuming Dillon was a passenger of the vehicle and not the sole occupant, there is sufficient evidence to find him in constructive possession of the vehicle. A passenger in a stolen motor vehicle with knowledge of the vehicle's status "'shall be equally guilty with the person taking or driving said automobile.'" *State v. Phimmachak*, 93 Wn. App.11, 13 n.1, 968 P.2d 1 (1998) (quoting former 9A.56.070(1) (1975)). Both Dillon's flight and the use of a shaved key to operate the vehicle indicate knowledge that the vehicle was stolen. Therefore, even if there was another occupant of the Toyota, Dillon is "equally guilty" of possessing the stolen vehicle.

to prove knowledge. *Womble,* 93 Wn. App. at 604 (internal quotation marks omitted) (quoting *Couet*, 77 Wn.2d at 776). Flight following the commission of a crime is admissible if it creates a reasonable and substantive inference of guilt or was a deliberate effort to evade arrest. *State v. Bruton*, 66 Wn.2d 111, 112-113, 401 P.2d. 340 (1965). Evidence of "a damaged ignition, an improbable explanation or fleeing when stopped" constitutes sufficient corroborative evidence to support knowledge that a vehicle is stolen. *State v. L.A.*, 82 Wn. App. 275, 276, 918 P.2d 173 (1996).

In this instance, the Toyota's rapid acceleration away from Martin's fully marked police vehicle and the failure to stop at a clearly marked stop sign are evidence of flight and are corroborative evidence that Dillon knew that the car was stolen. Furthermore, Dillon's flight on foot from the stopped vehicle is evidence of knowledge of the vehicle's stolen status. *See State v. Freeburg,* 105 Wn. App. 492, 497, 20 P.3d 984 (2001). Finally, the use of a shaved key to operate the car also indicates knowledge that the vehicle was stolen. *L.A.*, 82 Wn. App. at 276. Thus, based on this corroborative evidence, a reasonable jury could have found that Dillon knew he was in possession or control of a stolen vehicle either as the driver and sole occupant or as a passenger in the vehicle.

Because a reasonable juror could have found that Dillon had constructive possession of the stolen vehicle and knowledge that the vehicle was stolen, we affirm his conviction for unlawful possession of a stolen vehicle.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Van Deren, C. J.

We concur:

Houghton, J.

Quinn-Brintall, J.